Milan Auto Sdn Bhd v Wong Seh Yen

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO R2–25–60–92
WAN ADNAN J
4 APRIL 1994

Labour Law *— Employment — Dismissal — Claimant dismissed without due enquiry — Whether claimant employee within the Employment Act 1955 — Whether enquiry had to be held*

The claimant was employed by the company with a monthly salary of RM600 before his services were terminated without notice. It was the contention of the claimant that the company had violated s 14(1) of the Employment Act 1955 ('the Act') in that no enquiry was held before dismissal. Therefore the dismissal was without just cause or excuse. The chairman of the Industrial Court held that the claimant, being an employee within the meaning of the Act, could only be dismissed after due enquiry. The company applied for an order of certiorari to quash the award of the Industrial Court.

Held, dismissing the application:
The claimant employed with a monthly salary of RM600 was an employee under the Act and the provisions of the Act apply to him. His employer was therefore bound by the provisions of the Act. In respect of employees within the meaning of the Act it was mandatory that an enquiry be held before an employer can dismiss an employee on the ground of misconduct. Section 13(2) of the Act does not apply as under this section, either party may terminate a contract of service without notice only in the event of any wilful breach by the other party of a condition of the contract of service. In this case, the company was relying on the ground of misconduct for the dismissal of the claimant.

[Bahasa Malaysia summary

Penuntut telah digaji oleh sebuah syarikat dengan gaji bulanan RM600 sebelum perkhidmatannya dihentikan tanpa notis. Penuntut berhujah bahawa syarikat itu telah melanggar Akta Pekerjaan 1955 ('Akta itu') kerana suatu siasatan tidak dibuat sebelum beliau dipecat. Oleh itu, pemecatan itu telah dibuat tanpa sebab atau alasan. Pengerusi Mahkamah Perindustrian telah memutuskan bahawa penuntut itu yang merupakan seorang pekerja mengikut maksud Akta itu hanya boleh dipecat selepas suatu siasatan. Syarikat itu telah memohon untuk suatu perintah certiorari untuk membatalkan award Mahkamah Perindustrian itu.

Diputuskan, menolak permohonan itu:
Penuntut telah digaji dengan gaji bulanan RM600 merupakan seorang pekerja di bawah Akta itu dan peruntukan Akta itu terpakai kepadanya.

Oleh itu, majikan beliau diikat oleh peruntukan Akta itu. Adalah mandatori supaya suatu siasatan dibuat bagi pekerja yang berada di bawah maksud Akta itu sebelum majikan boleh memecat pekerja itu atas alasan salah laku. Seksyen 13(2) Akta itu tidak terpakai kerana di bawah seksyen ini, mana-mana pihak hanya boleh menamatkan kontrak pekerjaan itu tanpa notis jika terdapat kemungkiran yang sengaja syarat kontrak pekerjaan itu oleh pihak yang lain. Di dalam kes ini, syarikat itu begantung kepada alasan salah laku untuk memecat penuntut itu.]

Notes

For cases on the termination of the services of an employee, see 8 *Mallal's Digest* (4th Ed) paras 512–523 and 637–665; [1989] Mallal's Digest 949; [1991] Mallal's Digest 1272–1274 and 1313–1315.

Cases referred to

1 *Workmen of the Motipur Sugar Factory Pte Ltd v The Motipur Sugar Factory Pte Ltd* AIR 1965 SC 1803 (distd)
2 *Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor* [1988] 1 MLJ 111 (distd)

Legislation referred to

Employment Act 1955 ss 13(2), 14(1), First Schedule Category 1

Azzat Kamaluddin (*Chua Brothers, Azzat & Izzat*) for the applicant.
Sivarasa Rasiah (*Sivarasa & Associates*) for the respondent.

Wan Adnan J: This is an application for an order of certiorari to quash the award of the Industrial Court No 116/92 dated 26 May 1992.

The claimant was employed by the company as a mechanic with a monthly salary of RM600. By a letter dated 31 March 1990, the company terminated his service without notice, that is, to take effect immediately. It was the contention of the claimant that the company had violated s 14(1) of the Employment Act 1955 ('the Act') in that no enquiry was held before dismissal.

Therefore the dismissal was without just cause or excuse. Section 14(1) of the Act provides as follows:

> An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, *after due inquiry* —
>
> (a) dismiss without notice the employee;
> (b) downgrade the employee; or
> (c) impose any other lesser punishment as he deems just and fit. (Emphasis added.)

The learned chairman of the Industrial Court held that the claimant being an employee within the meaning of the Act could only be dismissed after due enquiry. An enquiry is a must before he could be dismissed. The learned chairman also held that the failure to hold an enquiry under s 14(1)

A could not be saved by the principle in *Workmen of the Motipur Sugar Factory Pte Ltd v The Motipur Sugar Factory Pte Ltd*[1] which was adopted by the Supreme Court in *Dreamland Corp (M) Sdn Bhd v Choong Chin Sooi & Anor*[2] and which states as follows:

> When an employer has failed to make an inquiry before dismissing or discharging
B a workman it is open to him to justify his action before the tribunal by leading all relevant evidence before it. The entire matter would be open before the tribunal. It will have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. The important effect of omission to hold an enquiry is merely that
C the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out.

Before me the learned counsel for the company contended that there was no necessity to hold an enquiry. His authority is s 13(2) of the Act which
D provides as follows:

> Either party to a contract of service may terminate such contract of service without notice in the event of any wilful breach by the other party of a condition of the contract of service.

He further contended that the Industrial Court ought to have applied the
E principle in *Dreamland*'s case[2] to decide for itself on the evidence adduced by the company whether the charges against the claimant had really been made out. He therefore contended that there was an error going into jurisdiction.

Under [s 2 of] the Act:

F 'employee' means any person or class of persons —

(a) included in any category in the First Schedule to the extent specified therein; or
(b) in respect of whom the Minister makes an order under subsection (3) or section 2A;

G Category 1 under the First Schedule states as follows:

> Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed one thousand two hundred and fifty ringgit a month.

The claimant employed as a mechanic with a monthly salary of RM600 is
H therefore an employee under the Act. The provisions of the Act apply to him. His employer is bound by the provisions of the Act.

In *Dreamland*'s case[2] the claimant was employed as a project manager with a monthly salary of RM2,400. He was therefore not an employee within the meaning of the Act. The provisions of the Act had no application. Hence there was no statutory requirement for the holding of an enquiry
I before dismissal. It was only justice and fairness that required the holding of an enquiry. In my view it is only in respect of persons who are not employees under the Act that the principle in *Dreamland*'s case[2] has application. The principle applies only in a case where there is no statutory

requirement for the holding of an enquiry, but justice and fairness demand that an enquiry be held.

In my view in respect of employees within the meaning of the Act it is mandatory that an enquiry be held before an employer can dismiss an employee on the ground of misconduct.

It is also my opinion that s 13(2) of the Act does not apply in this case. Under this section either party may terminate a contract of service without notice only in the event of any wilful breach by the other party of a condition of the contract of service. If an employer refuses to pay the wages due to his employee under the contract of service, the employee may terminate the contract of service. The employer has committed a breach of a condition of the contract of service. If an employee wilfully refuses to perform the specific duties he had agreed to perform under the contract of service the employer may terminate the contract of service under this section because there was a wilful breach by the employee of a condition of the contract of service. In this case the company was relying on the ground of misconduct for the dismissal of the claimant as can clearly be seen from the contents of the letter of dismissal dated 31 March 1990. Paragraph 2 of the letter said:

> We have been informed by your immediate superior, service manager, Mr Yew Sin Nam, that your attitude towards the company's working policy is very unbecoming. On three occasions you have been caught sleeping during office hour by the parts director and operations manager. You have taken leave without approval from your immediate superior. When you were ask to see the management with regards to the mentioned, you were very arrogant and refused to see the operations manager.

The dismissal was under s 14(1) of the Act.

I therefore held that the Industrial Court had not erred in refusing to apply the principle in *Dreamland*'s case.[2]

The application is dismissed with costs.

Application dismissed.

Reported by Jeanne Tan